

**ORIGINAL**

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )

Rulemaking to Amend Parts 1, 2, 21 and 25 )  
of the Commission's Rules to Redesignate )  
the 27.5-29.5 GHz Frequency Band, to )  
Reallocate the 29.5-30.0 GHz Frequency Band, )  
to Establish Rules and Policies for Local )  
Multipoint Distribution Service and for )  
Fixed Satellite Services )

CC Docket No. 92-297

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OFFICE OF SECRETARY

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To: The Commission

**COMMENTS OF THE AD HOC RURAL TELECOMMUNICATIONS GROUP**

The Ad Hoc Rural Telecommunications Group ("RTG"), by its attorneys, respectfully submits these Comments in response to the *Fourth Notice of Proposed Rulemaking* ("FNPRM"), released by the Federal Communications Commission ("FCC" or "Commission") on July 22, 1996, in CC Docket No. 92-297. These Comments focus primarily on the eligibility of incumbent rural telephone companies to obtain Local Multipoint Distribution Services ("LMDS") licenses for the geographic areas they serve.

**I. STATEMENT OF INTEREST**

RTG is a group of concerned rural telephone companies who have joined together to ensure that incumbent, rural local exchange companies ("LECs") are eligible to provide LMDS in their geographic service areas. RTG promotes the efforts of all rural telephone companies to speed the delivery of new, efficient and innovative telecommunications technologies to the populations of remote and under-served parts of the country. RTG's

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participation in this rulemaking is necessary to ensure that the Commission is apprised of the detrimental effects to competition and the introduction of new services in rural areas that would result from denying eligibility to rural telephone companies. Specifically, denying incumbent rural telephone companies and cable operators eligibility will bar the best suited entities from competing in rural areas, thereby hindering the delivery of LMDS to rural America.

## **II. COMMENTS**

### **A. Open Eligibility Would Best Serve the Competitive Objectives of the 1996 Act.**

The Telecommunications Act of 1996 ("1996 Act") mandates a regime of market-driven, open competition in the provision of all forms of telecommunications services and multichannel video programming. The 1996 Act especially seeks to encourage competition with incumbent LECs and cable operators, and the Commission is wise to seek specific comments about LMDS eligibility in light of the passage of the 1996 Act.

The best way to meet the objectives of the 1996 Act, especially in rural America, is to allow open eligibility for LMDS licenses, including eligibility for LECs and cable operators in geographic areas that they serve. The Commission's allocation of spectrum for LMDS combined with the Commission's new flexible services policy, allows for a dizzying array of service offerings. Most significantly, LMDS is a potential full-service substitute for local exchange and cable services. Since licensees may choose to provide many different services, the Commission should let the marketplace decide what services are provided and who

provides them.

The Commission's concerns that a LEC or cable operator would buy and warehouse spectrum, are unfounded. Given the very high cost of spectrum awarded through the auction process, and the potential array of revenue generating services an LMDS licensee could offer, there is simply no incentive to warehouse spectrum or to use LMDS spectrum in a non-productive, "less competitive" manner. The opportunity costs would be too great, especially to small rural telephone companies. Moreover, the Commission's proposed build-out requirements further reduces the risk that a licensee will warehouse spectrum.<sup>1</sup>

LMDS is well suited for competition between cable operators and LECs in each other's markets. The Commission is obligated to foster this competition by allowing full and open eligibility, and therefore competitive bidding, of these two industries.

Denying LEC and cable operator eligibility or placing other restrictions on the use of LMDS distorts the market and introduces regulatory inefficiency, especially in rural America.<sup>2</sup>

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<sup>1</sup> See, *In the Matter of Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services and Suite 12 Group Petition for Pioneer's Preference*, CC Docket No. 92-297, 11 FCC Rcd. 332 (1995) ("*Third NPRM*"). The Commission proposes requiring LMDS licensees to construct and provide service to one-third of the population in their geographic area in five years and to two-thirds of the population in ten years. *Third NPRM* at par. 117.

<sup>2</sup> When considering LEC eligibility, the Commission should avoid considering regulating or restricting the type of LMDS services a licensee can provide. Restricting the use of the license is inconsistent with the Commission's flexible service policy, causes inefficient use of LMDS spectrum and introduces regulatory distortion into the marketplace. For example, in the future, in a given market, cellular operators, PCS providers, incumbent LECs and new entrants and resellers may be providing local exchange service. It would be presumptuous at best for the FCC to require the LMDS licensee, who may also be the incumbent cable

Even a "temporary" restriction will seriously distort market forces since it would preclude LECs from participating in the auctions for LMDS.

**B. Restrictions on Rural Telephone Companies Would Be Anticompetitive and Would Hinder the Introduction of LMDS to Rural America.**

RTG generally opposes any restrictions on an incumbent LEC's or cable operator's eligibility for LMDS licenses in the geographic areas they serve, and RTG is especially concerned about the potential harm such restrictions would have on rural telephone companies and the populations they serve. Accordingly, if the Commission does impose restrictions on LEC and cable operator eligibility, the Commission should not apply such eligibility restrictions to rural telephone companies. As discussed below, the unique requirements and limitations facing rural America, require the Commission to allow rural telephone companies to acquire LMDS licenses.

**1. Restrictions on Rural Telephone Companies Would Have Anticompetitive Effects on Rural America.**

The 1996 Act seeks to encourage competition in the provision of local exchange and multichannel video distribution service. LMDS is uniquely suited to provide this competition because of the relatively low cost of implementing the service. Alternative methods of providing video and telephone services are especially restricted in rural areas because of the

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operator, to utilize LMDS spectrum to provide telephone service rather than another service for which there is greater market demand.

high cost of deploying fiber and coaxial cable in remote areas. By denying rural telephone companies and cable operators eligibility, the Commission would remove the best potential competitive providers of LMDS in rural areas, thereby discouraging investment in LMDS, and denying its benefits to rural populations.

New LMDS entrants in rural markets will face substantial economic challenges and may opt not to build a full-service LMDS system. Difficult terrain and low population density combine to make rural markets less desirable to large investors and large LMDS providers. Rural telephone companies and local cable operators by contrast, already have an interest and presence in these rural areas. These entities are well suited to compete with each other in their geographic areas, and to offer a wide range of new services, and LMDS, through the auction process, will provide the vehicle for this competition and expansion.

Rural telephone companies and cable operators have an incentive to use LMDS to its highest and best use. Since the Basic Trading Areas ("BTAs") are larger than the service areas of rural telephone companies, a rural LEC using LMDS could expand its coverage area to additional customers while offering video programming in the area currently served by its wireline facilities. If rural telephone companies are allowed to compete for LMDS licenses, the market will decide the best combination of services.

**2. Denying Rural Telephone Companies Eligibility Contravenes Sections 309(j)(3)(A) and (B) of the Communications Act of 1934, as amended, as it Would Hinder the Rapid Deployment of LMDS Technology to the Rural Public**

Section 309(j)(3)(A) of the Communications Act of 1934, as amended

("Communications Act"), states that the Commission is charged with promoting "the

development and rapid deployment of new technologies, products, and services for the benefit of the public, **including those residing in rural areas**, without administrative or judicial delays.”<sup>3</sup> To implement this directive, the Commission should allow incumbent rural telephone companies to provide LMDS.

In rural areas, LECs and cable operators have economies of scale and scope that would allow them to provide competing services or to expand their existing services and service areas. But for rural telephone companies, there will not be sufficient providers with the necessary interest, resources and expertise in rural areas to construct and operate LMDS systems. Therefore, any restrictions on the eligibility of rural telephone companies will sacrifice the interests of people residing in rural areas of the country, and are clearly contrary to Congress's directive in the Communications Act.

Section 309(j)(3)(B) of the Communications Act calls for the Commission to promote economic opportunities for a variety of telecommunications providers, **including rural telephone companies**.<sup>4</sup> As discussed above, denying eligibility to rural telephone companies may, as a practical matter, restrict their participation in the LMDS industry. Such a result clearly violates the mandate of Section 309(j)(3)(B) of the Communications Act that rural telephone companies be afforded economic opportunities to participate in the provision of new and innovative services. Restricting eligibility would place rural telephone companies at a serious competitive disadvantage rather than affording them the designated entity preference that Congress mandated.

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<sup>3</sup> 47 U.S.C. § 309(j)(3)(A) (emphasis added).

<sup>4</sup> 47 U.S.C. § 309(j)(3)(B) (emphasis added).

**C. The Commission Should Allow Rural Telephone Companies An Exclusive Right To Acquire Geographically Partitioned LMDS Spectrum in Their Service Areas.**

The Commission should allow LMDS licensees to disaggregate and assign excess spectrum to LECs, and such disaggregation and partitioning should be allowed even if the Commission restricts LECs' eligibility to participate in the LMDS auction. Moreover, as further detailed in RTG's Comments in the *CMRS Partitioning NPRM*,<sup>5</sup> rural telephone companies should have an exclusive right to acquire partitioned spectrum in their service areas. This partitioning right is consistent with the Commission's obligation to ensure that residents of rural areas have access to new technologies and that rural telephone companies are afforded new economic opportunities.<sup>6</sup>

**D. The Commission Should Designate Additional LMDS Spectrum in the 31 GHz Band**

The Commission should designate 300 megahertz of additional LMDS spectrum in the 31 GHz band. As the Commission has reasoned, there is significant demand for the two-way interactive services which LMDS can provide. Because LMDS providers will not be licensed for subscriber-to-hub transmissions in the 29.1-29.25 GHz band, additional spectrum will be necessary in order to provide consumers with the full panoply of services LMDS can offer.

If the Commission combines all the LMDS spectrum and treats it as a single block for

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<sup>5</sup> *In the Matter of Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Service Licensees; Implementation of Section 257 of the Communications Act-- Elimination of Market Entry Barriers*, Notice of Proposed Rulemaking, WT Docket 96-148, GN Docket No. 96-113 ("*CMRS Partitioning NPRM*").

<sup>6</sup> 47 U.S.C. § 309(j)(3)(A) , (B)

assigning licenses as the Commission has proposed in the *FNPRM*, the Commission should afford rural telephone companies and other designated entities bidding credits and installment payment plans consistent with prior auctions to ensure that rural telephone companies and other designated entities are able to acquire spectrum consistent with the Congressional mandate.

The Commission also should permit the auction winners to disaggregate spectrum consistent with the Commission's flexible spectrum licensing goals.<sup>7</sup>

### III. CONCLUSION

Restricting eligibility would have serious anti-competitive effects in rural America. It would remove important sources of competition and ultimately would hamper the ability of rural America to receive high-quality, innovative LMDS services in a timely fashion. Any restrictions would be counter to the Commission's obligations under the Communications Act to ensure that rural populations and rural telephone companies receive sufficient opportunities to participate in the provision of new and advanced telecommunications services.

Accordingly, RTG respectfully requests that the Commission allow open eligibility to allow LECs and cable operators to acquire LMDS licenses in the geographic areas they serve;

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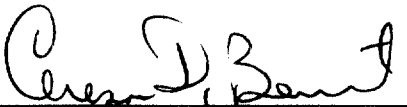
<sup>7</sup> See, e.g. *CMRS Partitioning NPRM*.



or alternatively, that the Commission recognize the realities of rural markets and allow rural telephone companies full eligibility to participate in LMDS.

Respectfully submitted,

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